



C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4^e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Brian Cadieux,

complainant,

and

Amalgamated Transit Union, Local 1415,

respondent,

and

Greyhound Canada Transportation Corp.,

employer.

Board File: 28982-C

Neutral Citation: 2012 CIRB 656

September 21, 2012

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. André Lecavalier and Daniel Charbonneau, Members.

Parties' Representatives of Record

Mr. Brian Cadieux, on his own behalf;

Mr. G. James Fyshe, for the Amalgamated Transit Union, Local 1415;

Mr. David Butler, for Greyhound Canada Transportation Corp.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

I–Nature of the Application

[1] Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations) (Code)* provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to issue a decision without an oral hearing.

[2] On September 30, 2011, the Board received from Mr. Brian Cadieux a duty of fair representation (DFR) complaint alleging that his bargaining agent, the Amalgamated Transit Union, Local 1415 (ATU), had violated section 37 of the *Code*:

37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[3] Mr. Cadieux had been a driver for a short period of time for Greyhound Canada Transportation Corp. (Greyhound). Greyhound and the ATU have a collective agreement governing the terms and conditions of employment for drivers like Mr. Cadieux.

[4] After considering the parties' submissions, and the investigation report by the Industrial Relations Officer (IRO), the Board has decided to dismiss the complaint for the reasons which follow.

II–Nature of the Duty of Fair Representation

[5] The Board has a specific focus when considering a DFR complaint under section 37 of the *Code*. A DFR complaint, as the wording of section 37 of the *Code* illustrates, concerns a bargaining unit member's rights under the applicable collective agreement. A trade union must not act in an arbitrary, discriminatory or bad faith manner with regard to those collective agreement rights.

[6] The Board in a DFR complaint does not evaluate an employer's work practices. Neither does the Board decide the merits of a bargaining unit member's grievance. An arbitrator considers the merits of a grievance, not the Board.

[7] The Board focusses instead on the trade union's overall representation process for a bargaining unit member. That process may include decisions regarding whether a grievance is filed, referred to arbitration and/or settled.

[8] The Board raises these points since Mr. Cadieux's complaint alleged many things which went far beyond the ATU's process when it considered the grievances he had filed. For example, Mr. Cadieux alleged Greyhound management had not respected its legal obligations. He specified that one of his goals in filing a complaint was to change internal Greyhound management and/or its practices. Mr. Cadieux also suggested the Board should impose a fine on Greyhound.

[9] Mr. Cadieux's September 11, 2012 submission, besides being filed long after pleadings had closed, similarly had no relevance to a DFR complaint.

[10] Mr. Cadieux also asked the Board to reinstate him in his employment. Even if Mr. Cadieux had succeeded in his DFR complaint, the Board does not reinstate successful complainants. If the Board decides to send a matter to arbitration at all, then an arbitrator would decide that type of issue.

[11] The Board recently reviewed the scope of a DFR complaint in *Lamolinaire*, 2009 CIRB 463 (*Lamolinaire*):

[30] The law surrounding the duty of fair representation is straightforward. The Board does not sit in appeal of the numerous decisions made by a union in assessing a matter, as that work is part and parcel of the union's power of exclusive representation of the bargaining unit conferred on it when it is granted certification.

[31] One of the union's duties as exclusive representative is to make discretionary decisions.

[32] Generally speaking, the Board respects the decisions made by the unions.

[33] **However, the Board does have an important duty to perform under section 37 of the Code. Along with the exclusive power conferred on a union to represent a bargaining unit comes a prohibition against the union acting in a manner that is arbitrary, discriminatory or in bad faith in the representation of the employees in the unit with respect to their rights under the collective agreement.**

[34] The Board must therefore closely examine the matter and the procedure followed by a union, to ensure that the union did not act in a manner that was arbitrary, discriminatory or in bad faith.

[35] In *Ronald Schiller*, 2009 CIRB 435, a recent decision in which the Board considered the investigation conducted by the union, the Board stated the following:

[33] A union also cannot act arbitrarily by only superficially considering the facts or merits of a case. It would be arbitrary not to investigate and discover the circumstances surrounding the grievance or to fail to make a reasonable assessment of the case.

[34] Union officials can make honest mistakes in the sense that they may wrongly assess a grievance but still not act arbitrarily. As the Board stated at paragraph 37 in *Virginia McRae-Jackson et al., supra*:

"[37] Accordingly, the Board will normally find that the union has fulfilled its duty of fair representation responsibility if: a) it investigated the grievance, obtained full details of the case, including the employee's side of the story; b) it put its mind to the merits of the claim; c) it made a reasoned judgment about the outcome of the grievance, and d) it advised the employee of the reasons for its decision not to pursue the grievance or refer it to arbitration."

[35] In short, the Board examines the trade union's process in order to determine whether it acted in an arbitrary, discriminatory or bad faith manner.

[36] **Given that a member of a bargaining unit generally does not have an absolute right to have a grievance referred to arbitration, the Board must consider, among other things, the following questions in regard to an investigation conducted by a union:**

1. Did the union conduct only a perfunctory or cursory inquiry, or a thorough one?
2. Did the union gather sufficient information to arrive at a sound decision?
3. Were there any personality conflicts or other bad relations that might have affected the soundness of the union's decision?

[37] **Regarding the duty of fair representation, it is true that a union has certain obligations toward its members, but members also have obligations. Complainants must assist their union in the performance of its duties.** If a union is investigating a matter, the complainant has a duty to provide as much information as possible to ensure that the final decision is a sound one.

(emphasis added)

[12] Given the Board's role in DFR complaints, the merits of Mr. Cadieux's grievances, and his unproven allegations regarding Greyhound, are not relevant. In addition, the fact that Greyhound did not reply to Mr. Cadieux's complaint, far from giving rise to any adverse inference, merely reflects the usual employer practice when informed of a DFR complaint. A DFR complaint is a matter between a trade union and its members; an employer has limited standing, except as far as remedy is concerned: *Canada Post Corporation*, 2010 CIRB 558.

III-Facts

[13] Mr. Cadieux, who resides in Montreal, had worked for Greyhound for approximately two and a half years at the time of his dismissal. He drove for Greyhound from its Montreal terminal.

[14] The Board has sifted through the voluminous materials Mr. Cadieux filed. In essence, Mr. Cadieux alleged the ATU violated the *Code* for its handling of his grievances contesting a) a five-day suspension and b) his termination.

A-Five Day Suspension (Summer/Fall, 2010)

[15] Mr. Cadieux had worked for Greyhound at the G20 summit held in Toronto in June, 2010. There were allegations that Mr. Cadieux had improperly logged his time.

[16] Allegations of improper logging are at the heart of the discipline which led to the ATU assisting Mr. Cadieux. As mentioned earlier in this decision, the Board does not decide the merits of Mr. Cadieux's grievances. Rather, it examines the ATU's process in handling those grievances, including the steps it took in reaching its conclusions.

[17] On July 29 and August 12, 2010, the ATU attended with Mr. Cadieux at Greyhound's Montreal hearings into the improper logging allegations. Mr. Cadieux described these Montreal meetings in the long Annexe to his complaint. In his view, the second meeting transpired much later in August. However, there is no dispute that Greyhound had two meetings with Mr. Cadieux about the allegations.

[18] After Greyhound imposed a five-day suspension on Mr. Cadieux, the ATU filed a grievance on September 6, 2010.

[19] Mr. Cadieux described in his complaint how he came to learn, in January, 2011, of a meeting of the ATU membership to consider whether to take his five-day suspension to arbitration. The ATU has a process pursuant to which bargaining unit members vote whether to take grievances to arbitration.

[20] The membership ultimately agreed to forward the matter to arbitration.

[21] The ATU later settled the grievance and obtained five days' pay for Mr. Cadieux. Mr. Cadieux received this payment on November 2, 2011. This payment arrived after Mr. Cadieux had already filed his September 30, 2011 DFR complaint with the Board.

B—Mr. Cadieux's Termination

[22] In the Spring of 2011, allegedly due to further violations, Greyhound terminated Mr. Cadieux. The ATU filed a grievance contesting the termination, as requested by Mr. Cadieux.

[23] The ATU was unable to resolve the matter with Greyhound during the grievance procedure. The issue then became whether the ATU should take Mr. Cadieux's termination grievance to arbitration.

[24] The ATU described the process it followed when deciding whether to take a grievance to arbitration. The ATU's Executive Board (EB) initially decides whether to recommend that the matter be taken to arbitration pursuant to article 7b of its Bylaws:

7. GRIEVANCES

...

b. At the last step of the grievance procedure and prior to the membership voting on arbitration, the member will present his case to the Executive Board, orally or in writing, at their regular meeting. Should the member not make a presentation to the Executive Board, the Executive Board will render its [sic] recommendation based on the evidence on file.

[25] The ATU membership then votes whether to send a grievance to arbitration, as provided by article 7c of the Bylaws. Arbitration votes for Mr. Cadieux's bargaining unit take place only in Toronto, London and Ottawa:

7. GRIEVANCES

...

c. The membership will vote by secret ballot at the general meetings as to whether to proceed to arbitration on any grievance involving the interest of an individual member. A simple majority will rule. **Arbitration votes will be held only in the cities of Toronto, London and Ottawa for the Greyhound bargaining unit.** Arbitrations for Barrie Transit will be held in Barrie. Arbitrations for other bargaining units will be discussed by the Executive Board and the Executive Board shall have final say where the vote will be held. Only members of the bargaining unit affected may vote on the arbitration.

(emphasis added)

[26] The ATU and Mr. Cadieux presented different versions about the process which occurred. The ATU alleged that Mr. Cadieux, despite receiving notice, declined to participate in either the EB or arbitration vote process. Mr. Cadieux alleged that the ATU failed to give him proper notice of the meetings.

[27] This key difference in the pleadings led the Board to ask its IRO to conduct an investigation pursuant to section 16(k) of the *Code*:

16. The Board has, in relation to any proceeding before it, power

(k) to authorize any person to do anything that the Board may do under paragraphs (a) to (h), (j), or (m) and to report to the Board thereon

Both Mr. Cadieux and the ATU received the opportunity to comment on the subsequent IRO Report.

[28] The ATU alleged that it gave notice to Mr. Cadieux in several ways for its June 1, 2011 EB meeting, held pursuant to article 7b of its Bylaws. Besides allegedly sending Mr. Cadieux an email, the ATU alleged that it had told Mr. Cadieux orally of the meeting.

[29] The email address that the ATU used to send notice to Mr. Cadieux, jani***.no***.n@*mail.com, leads to another area where the parties disagreed on the facts. The Board has edited the email addresses out of privacy concerns. The parties know the precise email addresses in question from the pleadings and the IRO Report. Mr. Cadieux alleged that he had no knowledge of any such email address. The ATU argued that Mr. Cadieux's own emails had used this address as a "Reply to" email address.

[30] One of the emails from Mr. Cadieux to which the ATU referred, and which is found at Attachment 5 of the IRO Report, read as follows:

...

Begin forwarded message:

From: COOL Brian <fr***@**mail.com>
Date: 27 July, 2010 11:50:05 AM EDT
To: Moe Al-Khafajy <***.**.****@*mail.com>
Subject: Events of July 19th, 2010
Reply-To: <jani***.no***.n@*mail.com>

You will find attach a letter to explain what happened on July 19th, 2010.

Just in case you can not open the FILE

I will copy the text here in this e-mail

Brian Cadieux

...

[31] There is no dispute that fr***@**mail.com is Mr. Cadieux's regular email address. The ATU further alleged that it also attempted to call Mr. Cadieux during its June 1, 2011 EB meeting, but there was no answer.

[32] Mr. Cadieux failed to attend at, or file any submissions for, that EB meeting. The EB decided not to recommend sending his termination grievance to arbitration.

[33] The IRO Report notes that Mr. Cadieux did not receive the general mailing to the membership about the arbitration vote for Mr. Cadieux's termination grievance. The ATU explained that since Mr. Cadieux was no longer a Greyhound employee, he was not on the general distribution list.

[34] In accordance with article 7c of the Bylaws, the ATU held these arbitration votes, along with other matters, in Toronto (June 14, 2011); Ottawa (June 15, 2011) and London (June 21, 2011). By letter dated June 28, 2011, the ATU informed Mr. Cadieux of the arbitration vote results:

Dear Brian, as you are aware the voting for your arbitration was voted on in Toronto on June 14, in Ottawa June 15, and in London on 21st. The results were 17-14 against taking this issue to arbitration.

[sic]

[35] The ATU argued that Mr. Cadieux had received ample notice of the arbitration vote meeting.

[36] The ATU mentioned that two of Mr. Cadieux's brothers were on the distribution list and received the notice. In addition, as shown at Attachment 2 to the IRO Report, the ATU's arbitration vote notice had been forwarded to Mr. Cadieux at the email address, fr***@**mail.com, which he did not dispute is his.

[37] Moreover, the ATU stated that one of its representatives suggested to Mr. Cadieux over the phone that he should attend the Ottawa meeting. While two of Mr. Cadieux's brothers attended the Ottawa arbitration vote meeting, Mr. Cadieux himself did not. The ATU alleged that Mr. Cadieux's brothers suggested Mr. Cadieux did not want to attend the meeting.

[38] According to the IRO Report, Mr. Cadieux did not deny he had, but at his own initiative, spoken with the ATU representative about the arbitration vote. However, he suggested that the ATU discouraged, rather than encouraged, his attendance.

[39] Mr. Cadieux also advised the IRO that his brothers had advised him about the upcoming arbitration vote.

[40] With respect to the dispute about the email address, jan***.no***.n@*mail.com, the ATU alleged that Mr. Cadieux had advised them that they could use either email. Mr. Cadieux, as well as his brothers, were adamant that Mr. Cadieux had only one email address, which was fr***@**mail.com.

[41] An issue which arose in this case concerned surreptitious recordings Mr. Cadieux had made. The ATU objected to the admissibility of these recordings, on the basis that they were made without the consent of those being recorded.

[42] There are two recordings which Mr. Cadieux admits he made. He recorded the July 29, 2010 Montreal meeting mentioned above. He further recorded an April 15, 2011 Greyhound meeting regarding his termination.

[43] There is a third recording from the June 15, 2011 arbitration vote held in Ottawa. On February 17, 2012, Mr. Cadieux initially advised the IRO that he received this recording by anonymous email. Mr. Cadieux later advised the IRO on February 29, 2012 that he knew who had sent him the email, but did not know who made the recording. Mr. Cadieux refused to produce the email and suggested the author was concerned about reprisals.

[44] Mr. Cadieux's brothers also advised the IRO they knew who had made the recording, but declined to reveal his/her identity for the same reason. One of Mr. Cadieux's brothers believed that Mr. Cadieux had asked this individual to make the recording.

[45] The Board has not listened to the surreptitious recordings, nor read what appear to be Mr. Cadieux's purported transcripts of those recordings. The Board did not need to rule on the ATU's admissibility objection given its conclusion that Mr. Cadieux had received sufficient notice of the arbitration vote. His decision not to participate allowed the Board to decide this case.

IV--Analysis and Decision

[46] Mr. Cadieux' complaint referred to two separate grievances he had filed. The first contested a five-day suspension, while the second contested the termination of his employment in April, 2011. Mr. Cadieux had the burden of proof to convince the Board that the ATU had violated section 37 of the *Code* in handling one or both of these matters.

A--Five-Day Suspension

[47] The ATU represented Mr. Cadieux at two different Montreal meetings in the summer of 2010. The ATU, under its arbitration vote process, agreed to take this grievance to arbitration.

[48] The pleadings confirm that the ATU ultimately settled this grievance. Mr. Cadieux received a cheque from Greyhound covering the five days in dispute. Mr. Cadieux has yet to cash the cheque.

[49] The Board has considered the process the ATU followed in arriving at this settlement. A trade union has carriage of its grievances. This means it has the authority to settle them, whether the bargaining unit member agrees or not. However, this authority is subject to the trade union not acting in an arbitrary, discriminatory or bad faith manner.

[50] The Board is satisfied that the ATU met its duty under the *Code*. Mr. Cadieux may not agree with the result, but this type of disagreement does not mean that the ATU's process did not respect the duty imposed by section 37 of the *Code*.

[51] The ATU turned its mind to Mr. Cadieux's situation and was able to get full redress for him. The fact that this resolution occurred a month after Mr. Cadieux filed his DFR complaint with the Board does not change this conclusion.

B-Termination Grievance

[52] The Board is similarly satisfied that the ATU respected its obligations with regard to Mr. Cadieux's termination grievance.

[53] The IRO Report provided sufficient information to satisfy the Board that Mr. Cadieux was aware of the ATU's upcoming arbitration vote process regarding his termination grievance. Mr. Cadieux, for reasons known only to him, chose not to participate fully in that process.

[54] The Board is not required to make a finding whether Mr. Cadieux actually received the email notice of the arbitration vote which was sent to the contested address of ja***.no***.n@*mail.com. It is nonetheless curious that the email address Mr. Cadieux claims to know nothing about actually appeared on one of his own emails as the "Reply To" email address.

[55] Neither is the Board required to determine who made the recording of the June 15, 2011 Ottawa meeting and later sent it to Mr. Cadieux.

[56] The facts in the IRO Report satisfied the Board that Mr. Cadieux was aware of the process the ATU planned to follow for his termination grievance. For example, the notice of the ATU's meetings was forwarded to Mr. Cadieux's admitted email by a "Sandra Cadieux" on June 10, 2011.

[57] Similarly, Mr. Cadieux's brothers informed him of the Ottawa arbitration vote. Mr. Cadieux did not dispute that he had spoken with an ATU representative who suggested it was important for him to be at the Ottawa meeting.

[58] In these circumstances, Mr. Cadieux knew of the meetings. The ATU had also followed a similar arbitration vote process earlier, which had resulted in Mr. Cadieux's five-day suspension grievance being sent to arbitration.

[59] A union member has an obligation to assist his trade union as it carries out its duties: *Lamolinaire, supra*. This includes participating in the process the trade union has put in place.

[60] The Board has previously examined trade union procedures pursuant to which bargaining unit members vote on whether to take a grievance to arbitration: *Charlebois* (1993), 91 di 14 (CLRB no. 989), upheld in *Charlebois v. Amalgamated Transit Union, Local 279 et al.* (1994), 169 N.R. 144 (F.C.A.). Whether a particular arbitration vote process satisfies a trade union's obligations under the *Code* depends on the facts of each case.

[61] It was incumbent on Mr. Cadieux to participate in the ATU's process. If he wanted to raise any procedural concerns he may have had, then he had ample time to do so. For example, as a Montreal resident, his complaint suggested he may have had concerns about votes in Ottawa, Toronto and London determining his fate. He may have also had concerns about his ability to appeal in person to voting members at different geographic locations in a different province.

[62] If Mr. Cadieux had raised such issues, then the ATU would have had a fair opportunity to consider whether it needed to make any procedural adjustments to the way it planned to conduct its arbitration vote. Referring to such issues in passing in his complaint did not relieve him of his original obligation to participate fully in the ATU's process.

[63] Mr. Cadieux's decision not to participate, despite receiving sufficient notice, prevents the Board from finding that the ATU acted in an arbitrary, discriminatory or bad faith manner. The Board will never know how the ATU's process would have unfolded if Mr. Cadieux had exercised his right to participate and raised any concerns he had.

[64] For the above reasons, the Board dismisses Mr. Cadieux's complaint.

[65] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

André Lecavalier
Member

Daniel Charbonneau
Member